

Corporate Update

SECURED TRANSACTIONS

The ABCs of ABCs: The Uniform Assignment for Benefit of Creditors Act

By Barbara M. Goodstein and Adam C. Wolk

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Introduction

Over the past few years, we have covered two important legislative initiatives by the Uniform Law Commission (aka the National Conference of Commissioners on Uniform State Laws) in commercial law—the 2022 emerging technology amendments to the Uniform Commercial Code and the 2024 Uniform Special Deposits Act. The Uniform Law Commission (the ULC) is a group of lawyers appointed by U.S. states and territories tasked with addressing uncertainties and promoting uniformity among state laws. Today we discuss another ULC effort in an area where state commercial law remains stubbornly inconsistent, namely, assignments for the benefit of creditors (ABC's).

BARBARA M. GOODSTEIN and ADAM C. WOLK are partners in the Banking and Finance Practice at the New York office of Mayer Brown. LAWRENCE B. CAI, an associate with the firm, assisted in the preparation of this article.



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On Oct. 20, 2025, the ULC recommended to states for enactment the Uniform Assignment for Benefit of Creditors Act (the ABC Act or the Act). According to the statute's Prefatory Note, the Act aims to "provide greater clarity, consistency, and uniformity to the assignment process across the fifty states, in the hope that assignments

will, where appropriate, become a robust tool for debtors throughout the country.” The Act is intended to modernize outdated state statutes and codify aspects of common-law assignment practice through a streamlined process.

What is an ABC?

So what exactly is an assignment for the benefit of creditors? The ULC identifies this assignment as “a liquidation procedure in which an ‘assignor’ in financial distress... voluntarily assigns all of its assets to an ‘assignee,’ a fiduciary, which liquidates the assets and distributes the proceeds to the assignor’s creditors.” It thus functions as “a voluntary, debtor-initiated state law alternative to federal bankruptcy, state receiverships, and voluntary workouts.” An ABC is generally viewed as much less expensive than a bankruptcy or other proceeding, making it an attractive alternative for cash-strapped debtors and their creditors.

Current Issues with Assignments

Assignment law varies dramatically by state. In some jurisdictions, ABC’s are governed primarily by common law. In several states, there is little or even no law at all, while other states may have well-established laws, but they date back decades or even centuries. (New York’s statute, for example, is from 1909.) Some states require court supervision; others do not. State-by-state differences have resulted in inconsistent usage across states; states with well-developed laws may see frequent use of ABC’s compared to other jurisdictions.

Why do companies opt for assignments if laws are so inconsistent? Despite their antiquity and lack of uniformity, ABC’s remain attractive - especially for small businesses - because the alternatives, such as bankruptcy or receivership,

are often costly, time-consuming and contentious. As a result, according to the ULC it has become “difficult to generalize what assignment law and practice look like,” and “some states have begun to blur the line between assignments and receiverships, essentially collapsing two different remedies into one.” Practitioners have therefore increasingly sought reforms that would make ABCs a distinct, efficient alternative.

The Building Blocks—Assignor, Assignee and Assignment Agreement

What are the building blocks for an assignment under the Act? The Act relies on several key concepts, using simple, straightforward definitions, including as to who is an “assignee” or “assignor,” and what is an “assignment,” “assignment agreement” and “assignment estate.” It then elaborates on the related requirements and procedures, including the duties of both the assignor and assignee, the powers of the assignee, the procedures for notifying creditors, claims resolutions, distributing assets, and winding up the assignment estate, the degree of court involvement and interstate matters. It also addresses the effect of the statute on non-participating creditors and secured creditors (the latter of which is the subject of proposed comments by the Permanent Editorial Board for the Uniform Commercial Code (the PEB), as discussed further below).

Section 1 of the Act defines “assignee” simply as a “person to which assets are transferred under an assignment.” Section 4 contains the requirements for an assignee and limits it to a disinterested person or organization, specifically, someone who is not “a creditor, affiliate or insider of the assignor nor of a creditor of the assignor,” nor has a claim

against or an equity interest (subject to limited exceptions) in the assignor or material financial interest in the assignment outcome (other than for fees and expenses). Notably, prior dealings with the assignor do not preclude an assignee's designation. The commentary notes that a lawyer may act as an assignee. "Assignor" is also defined simply in Section 1 as a "person whose assets are transferred under an assignment." The assignor can be an individual or organization but must generally reside or be organized in the enacting state.

The final remaining building blocks of "assignment," "assignment agreement" and "assignment estate" are all also simple and intuitive definitions. An "assignment" is "a transfer by a person of all the Person's assets to another person for the benefit of the transferor's creditors," an "assignment agreement" is "an agreement that transfers or provides for a transfer of all the assignor's assets" and an "assignment estate" consists of the "assets held at a given time by the assignee under an assignment." Under Section 4, an "assignment agreement" must be a record signed by both the assignor and assignee that identifies the assignor's assets, provides for the distribution of the assignment estate and contains a representation by the assignor under penalty of perjury that it is assigning all of its assets (although the definition of "asset" excludes an assignor's non-assignable property under other law and an individual assignor's exempt assets).

Given that the assets being transferred will likely include those subject to security interests, the statute's commentary says that while consent to the assignment is not required from a secured creditor of the assignor, practically speaking

a consent will likely make sense to avoid a foreclosure action by that creditor. Also notable is that under Section 10 of the Act (Powers of Assignee), the assignee is given the status of a "lien creditor" under UCC Section 9-102(52)(B) as well as a lien on the assignment estate (but not a security interest under Article 9) which, among other things, will enable it to have a priority interest in personal property and fixtures included in the assignment estate.

It may also have an automatically-perfected security interest in respect of certain assets (as discussed below). The Act commentary notes that there is no intent to change this. It nonetheless authorizes an assignee to file a financing statement in respect of any assignment assets constituting personal property in the filing office of the state governing the assignment (or any other state in which an asset of the assignment estate is located or where the assignor would be considered located under the "place to file" rules of UCC Section 9-307).

The statute contains very specific requirements for that financing statement, including attaching a copy of the assignment agreement or stating that it is available on request. This seems mostly directed to allowing the assignee to give public notice of the assignment while protecting it from claims that it is not filing an unauthorized financing statement. Regardless, Section 7 of the Act contains specific rules mandating notification by the assignee of the assignment to known creditors of the assignor.

The Duties of the Assignor and Assignee

Some important features of the Act are the duties imposed on the assignor and assignee. Section 8 requires the assignor to "take all reasonable actions necessary for the assignee

to administer the assignment, the assigned assets, and the assignment estate.” In addition to turning over the assigned assets, this could include providing the assignee with information “necessary to administer the assignment, the assigned assets, and the assignment estate,” signing transfer records, providing contact information, cooperating in resolving real property disputes, and providing lists of assets and creditors.

The assignee likewise has duties under the Act, outlined in Section 9. That section imposes on an assignee “a fiduciary duty to the assignment estate... of loyalty,... reasonable care... and to wind up the assignment compatible with the best interests of the assignment estate and creditors.” Subsection (b) of Section 9 outlines the administrative and accounting obligations of this duty, including maintaining a separate deposit account for the assignment, paying expenses for and collecting on the assets unless it is determined that abandonment is more economical, establishing a method for creditors to submit a proof of claim, and complying with the Internal Revenue Service.

The assignee is obliged to identify any creditors in addition to those identified by the assignor. And in an example of the many instances in which the Act relies on bankruptcy and other law concepts, the commentary equates the assignee’s fiduciary duty to the fiduciary duty of an estate representative in a bankruptcy case and its duty of loyalty with that concept under the Uniform Trust Code. Although the assignee’s power to collect on or dispose of assets is subject to its fiduciary duty, the commentary notes this duty “may or may not” align with the “commercial reasonableness” standard for

dispositions under UCC Article 9 (as discussed below). The assignee may be personally liable for breach of its fiduciary duty unless it has acted in good faith in certain circumstances, including reliance on a professional advisor.

The Act permits the parties to “expand, narrow, or otherwise modify by agreement” these duties, with the exception of the assignee’s fiduciary duties outlined by subsection (a) of Section 9. While the standards measuring fulfillment of these duties may be varied by agreement, Section 23 of the Act requires that those varied standards not be “manifestly unreasonable.”

Interstate Matters and the Role of Courts

Section 20 addresses circumstances in which there are multiple assignors organized or residing in different states. In that scenario, an assignment by one assignor under the law of another state must be recognized and enforced if the result would be substantially similar to the result under the home state of another assignor. The Act does not substantively consolidate assignment estates, although it also does not preclude joint administration. Finally, if “an assignee determines that a creditor should receive the treatment the creditor would receive under an assignment made under the law of another state,” the assignee may do so.

Under Section 21, courts maintain a limited but important role. Interested parties may seek court involvement to hear disputes. Similar to the bankruptcy code, acceptance of the assignment by the assignee constitutes its consent to the jurisdiction of the relevant court.

The PEB Comments

This past December, the Permanent Editorial Board for the Uniform Commercial Code (the “PEB”) issued a draft report entitled “The Provisions

of UCC Article 9 Relating to Assignments for Benefit of Creditors.” This report focuses on the Article 9 status of an assignee as a “lien creditor” and, where applicable, a “secured party,” and certain enforcement scenarios involving assigned assets.

As noted above, Section 10 of the Act recognizes the assignee as a “lien creditor” under UCC Section 9-102(a)(52)(b), which defines a “lien creditor” as including “an assignee for benefit of creditors from the time of assignment.” The PEB notes that this applies regardless of whether under state law the assignee has a lien on the assignor’s former assets for purposes other than Article 9. As a result, the assignee’s rights as lien creditor are senior to an unperfected or later perfected security interest, but junior to a security interest perfected before the effectiveness of the assignment.

When the assignment includes accounts, chattel paper, payment intangibles, or promissory notes, the PEB views that effectively as a sale and, accordingly, the assignee’s security interest in those assets would be automatically perfected. The PEB notes that since the assignee owns the assignment estate, the Article 9 rules requiring a commercially reasonable disposition would likely not apply absent recourse by the secured

party to the transferor (which in the ABC case would be atypical).

Conclusion

Assignments for the benefit of creditors have been increasing in popularity as a relatively affordable alternative to bankruptcy and receiverships. This is notwithstanding that state assignment laws have taken wildly different paths, with some having minimal, if any, established assignment law.

While we have touched on the Act’s highlights, it has many more interesting features that are beyond the scope of this article. Noteworthy is its heavy reliance on bankruptcy concepts, such as voidable transactions, allowed claims, proofs of claim and priority of payment of claims processes, and the standard for removal of a bankruptcy trustee (or in this case, an assignee). It draws also from other laws such as the Uniform Trust Code for fiduciary standards and the UCC for rights of transferees.

To remedy the lack of uniformity in this area of growing relevance, the Uniform Assignment for Benefit of Creditors Act is meant to bring consistency and predictability across the country. Importantly, the Act will give practitioners an efficient path to effect consensual liquidation of a distressed business.